



NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

45 CFR Part 1173

RIN 3136-AA45

Indemnification of Employees

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: The National Endowment for the Humanities (NEH) is adopting as final its proposed policy that permits indemnification of NEH employees in appropriate circumstances, as determined by the Chairperson of NEH or the Chairperson's designee, for claims made against NEH employees as a result of actions taken by them in the scope of their employment.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Deputy General Counsel, Office of the General Counsel, National Endowment for the Humanities, 400 7th Street, SW, Room 4060, Washington, DC 20506; (202) 606-8322; gencounsel@neh.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2021, NEH published in the Federal Register a notice of proposed rulemaking (86 FR 71863), requesting public comment on a proposed rule regarding indemnification of NEH employees. The agency received no comments. Accordingly, NEH is adopting the rule as proposed.

This policy permits, but does not require, NEH to indemnify an employee who suffers an adverse verdict, judgment, or other monetary award, provided that the act or omission giving rise

to the award occurred within the scope of the employee's employment, and that such indemnification is in the interest of NEH, as determined by the Chairperson or the Chairperson's designee. The policy also permits, but does not require, NEH to settle a claim brought against an employee in his or her individual capacity, upon a similar determination by the Chairperson or the Chairperson's designee. This policy applies to actions pending against NEH employees as of the effective date and to actions commenced after that date.

Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988, Civil Justice Reform

This rulemaking meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rulemaking is written in clear language designed to help reduce litigation.

Executive Order 13175, Indian Tribal Governments

Under the criteria in Executive Order 13175, NEH evaluated this rulemaking and determined that it will not have any potential effects on Federally recognized Indian Tribes.

Executive Order 12630, Takings

Under the criteria in Executive Order 12630, this rulemaking does not have significant takings implications. Therefore, a takings implication assessment is not required.

Regulatory Flexibility Act of 1980

This rulemaking will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

Paperwork Reduction Act of 1995

This rulemaking does not impose an information collection burden under the Paperwork Reduction Act. This action contains no provisions constituting a collection of information pursuant to the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year.

National Environmental Policy Act of 1969

This rulemaking will not have a significant effect on the human environment.

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking will not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rulemaking will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E-Government Act of 2002

All information about NEH required to be published in the *Federal Register* may be accessed at www.neh.gov. The website www.regulations.gov contains electronic dockets for NEH's rulemakings under the Administrative Procedure Act of 1946.

Plain Writing Act of 2010

To ensure this proposed rule speaks in plain and clear language so that the public can use and understand it, NEH modeled the language of the proposed rule on the Federal Plain Language Guidelines.

List of Subjects in 45 CFR Part 1173

Administrative practice and procedure.

For the reasons set forth in the preamble, the National Endowment for the Humanities amends 45 CFR chapter XI subchapter D by adding part 1173 to read as follows:

PART 1173—INDEMNIFICATION OF EMPLOYEES

Sec.

1173.1 Policy on employee indemnification

1173.2 [Reserved]

Authority: 5 U.S.C. 301.

§ 1173.1 Policy on employee indemnification.

(a) This part explains when the National Endowment for the Humanities (NEH) will indemnify you, an employee or a former employee of NEH, against a verdict, judgment, or other monetary award that a court or other competent authority renders against you. When NEH indemnifies you against a verdict, judgment, or other monetary award, it means that NEH will pay the amounts that the court orders you to pay.

(b) This part also explains when NEH will settle a claim (also referred to as compromising a claim) that someone brings or threatens to bring against you in court or before another competent authority. It is only in exceptional circumstances that NEH will agree to settle a claim before a court or other competent authority has entered a verdict, judgment, or monetary award against you.

(c) In order for NEH to indemnify you or settle a claim:

(1) The verdict, judgment, or monetary award to be paid or the claim to be settled must relate to something that you did (or failed to do) within the scope of your employment with NEH; and

(2) The Chairperson of NEH or someone the Chairperson designates (the Agency Official) must determine, as a matter of discretion, that indemnifying you or settling the claim would be in the interest of NEH.

(d) If you become aware that someone has made or may make a claim against you personally as a result of something that you did (or failed to do) within the scope of your employment, you must immediately notify the Office of the General Counsel.

(e) To request that NEH indemnify you or settle a claim against you, you must submit a written request to the Office of the General Counsel. You must include a copy of the verdict, judgment, monetary award, or settlement proposal, as appropriate. The Office of the General Counsel may consult about the matter with your supervisor, other agency employees, and the Department of Justice.

(f) The Agency Official may waive the requirements of paragraphs (d) and (e) of this section if it would be in the interest of NEH to do so.

(g) If the Agency Official determines that NEH will indemnify you or settle a claim on your behalf, NEH's commitment will be subject to the availability of appropriated funds. The Agency Official may impose other conditions or limitations on the determination at his or her discretion.

(h) If the Chairperson requests indemnification or settlement of a claim, the General Counsel will perform the functions assigned to the Chairperson under this section with respect to that request.

§ 1173.2 [Reserved]

Dated: February 9, 2022.

Samuel Roth,

Attorney-Advisor, National Endowment for the Humanities.

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